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**STANDARD CLAUSES FOR TEXAS DIR CONTRACTS**

The parties to the attached Contract, amendment or other agreement of any kind (hereinafter, "this Contract") agree to be bound by the following clauses which are hereby made a part of this Contract.

**1. INDEMNIFICATION CLAUSE.** Reseller shall defend, indemnify and hold harmless the State of Texas, its officers, agents, and employees from and against all claims, actions, suits, demands, proceeding, costs, damages and liabilities, including attorneys fees, arising out of, or resulting from any acts or omissions of the Reseller or its agents, employees, subcontractors, or suppliers of subcontractors in the execution or performance of this Contract and any Purchase Order(s) issued under this Contract.

The Reseller shall defend, indemnify and hold harmless the State of Texas, its officers, agents and employees, from any and all claims involving infringement of patents, copyrights, trade and service marks, and any other intellectual or intangible property rights in connection with the use of any product or service supplied by the Reseller. Reseller agrees to defend against any and all such claims at Reseller's expense, whether or not such claims become the subject of litigation. DIR will provide reasonable assistance in the defense of such claims if so requested by the Reseller. Reseller agrees to coordinate defense with the Texas Office of Attorney General, as may be requested by DIR.

**2. NON-ASSIGNMENT CLAUSE.** This Contract shall be entered into and be binding upon the successors of the parties. Reseller may not assign this Contract without the prior written consent of DIR. Any attempt to assign this Contract without the written consent of DIR is null and void.

**3. NO QUANTITY GUARANTEES.** This Contract is not exclusive to the named Reseller. Customers may obtain Information Resources Technologies from other sources during the Contract term. DIR makes no express or implied warranties whatsoever that any particular number of Purchase Orders will be issued or that any particular quantity or dollar amount of Information Resources Technologies will be procured through the Contract.

**4. CONFIDENTIALITY CLAUSE.** Reseller acknowledges that DIR is a government agency subject to the Texas Public Information Act. Reseller also acknowledges that DIR will comply with the Public Information Act, and with all opinions of the Texas Attorney General's office concerning this Act.

Under the terms of this Contract, DIR may provide Reseller with information related to Customers. Reseller shall comply with all State of Texas privacy policy guidelines, including, but not limited to, the requirement that Reseller shall not re-sell or otherwise distribute or release to any party in any manner, Customer information.

**5. RESELLER CERTIFICATIONS.**

Reseller certifies (i) it has not given, offered to give, and does not intend to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with this Contract; (ii) it is not currently delinquent in the payment of any franchise tax owed the State of Texas and is not ineligible to receive payment under §31.006 of the Texas Family Code and acknowledges this Contract may be terminated and payment withheld if this certification is inaccurate; (iii) neither it, nor anyone acting for it, has violated the antitrust laws of the United States or the State of Texas, nor communicated directly or indirectly to any competitor or any other person engaged in such line of business for the purpose of obtaining an unfair price advantage; (iv) it has not received payment from DIR or any of its employees for participating in the preparation of this Contract; (v) it is not ineligible to receive this Contract under § 2155.004, Texas Government Code; (vi) it is in compliance with §618.003, Texas Government Code; (vii) it will comply with §2155.444 and §2155.4441, Texas Government Code, in fulfilling the terms of this Contract; and (viii) to the best of the Reseller's knowledge and belief, there are no suits or proceedings pending or threatened against or affecting the Reseller, which if determined adversely to the Reseller will have a material adverse effect on the ability of the Reseller to fulfill its obligations under this Contract.

**6. EQUAL OPPORTUNITY COMPLIANCE.**

Reseller agrees to abide by all applicable laws, regulations, and executive orders pertaining to equal employment opportunity, including federal laws and the laws of the State in which its primary place of business is located. In accordance with such laws, regulations, and executive orders, the Reseller agrees that no person in the United States shall, on the grounds of race, color, religion, national origin, sex, age, veteran status or handicap, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed by Reseller under this Contract. If Reseller is found to be not in compliance with these requirements during the term of this Contract, Reseller agrees to take appropriate steps to correct these deficiencies. Upon request, Reseller will furnish information regarding its nondiscriminatory hiring and promotion policies, as well as specific information on the composition of its principals and staff, including the identification of minorities and women in management or other positions with discretionary or decision-making authority.

**7. TECHNOLOGY ACCESS CLAUSE, AS REQUIRED BY §2157.005, TEXAS GOVERNMENT CODE. (Applicable to State Agency Purchases Only)**

Reseller expressly acknowledges and agrees that State funds may not be expended in connection with the purchase of an automated information system unless that system meets certain statutory requirements relating to accessibility by persons with visual impairments. Accordingly, the Reseller represents and warrants to DIR

and each Customer purchasing products under this Contract that the technology provided hereunder is capable, either by virtue of features included within the technology or because it is readily adaptable by use with other technology of: (i) providing equivalent access for effective use by both visual and non-visual means; (ii) presenting information, including prompts used for interactive communications, in formats intended for non-visual use; and (iii) being integrated into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired. For the purposes of this section, the phrase "equivalent access means a substantially similar ability to communicate with or make use of the technology, either directly by features incorporated within the technology or by other reasonable means such as assistive devices or services which would constitute reasonable accommodations under the Americans with Disabilities Act or similar state or federal laws. Examples, of methods by which equivalent access may be provided include, but are not limited to, keyboard alternatives to mouse commands and other means of navigating graphical display and customizable display appearance.

**8. COMMODITY SOFTWARE.** Texas Government Code, §2157.068 requires State agencies to buy commodity software in accordance with contracts developed by DIR, unless the agency obtains a waiver from DIR. Reseller shall agree to coordinate all agency commodity software sales made pursuant to this Contract through existing DIR contracts, if available. Reseller represents it will not license through a signed or unsigned license agreement, volume licensing agreement or an order confirmation, the commodity software to state agencies unless the agency is able to provide a DIR granted waiver that the agency is able to purchase the commodity software outside the DIR Commodity Software contracts. The operating system software and institutions of higher education are not bound to this Code.

**9. RECORDS.** The Reseller shall maintain adequate records to establish compliance with this Contract until the later of a period of four years after termination of this Contract or until full, final and unappealable resolution of all audits or litigation issues that arise under this Contract. Such records shall include identification of the procuring Customer, documentation of the Customer's ordering date, Customer Purchase Order number, order date of product or service, ship date or service delivery date, full invoice address, unit price, extended price, invoice number, record of procuring Customer payment and/or balance due, the calculations supporting each administrative fee owed DIR under this Contract, Historically Underutilized Businesses Subcontracting reports, and such other documentation as DIR may request.

Reseller shall grant access to all paper and electronic records, books, documents, accounting procedures, practices and any other items relevant to the performance of this Contract to DIR, the auditors designated by DIR, including auditors of the State Auditor's Office and of the United States, and such other persons or entities designated by DIR for the purposes of inspecting, auditing and/or

copying such books and records. Copies and printouts requested by DIR shall be provided by Reseller without charge. DIR shall provide Reseller ten (10) business days' notice prior to inspecting, auditing, and/or copying Reseller's records. Reseller's records, whether paper or electronic, shall be made available during regular office hours. Reseller's personnel familiar with the Reseller's books and records shall be available to DIR staff and designees as needed. Reseller shall provide adequate office space to DIR staff during the performance of a compliance check or audit.

If any inspection or compliance check performed hereunder reveals an aggregate overcharge to a Customer of .5% or greater, or an aggregate underpayment to DIR of its administrative fee of .5% or greater, then the cost of such compliance check or inspection, including, but not limited to, the salary and associated overhead of DIR staff performing the compliance check or inspection, shall be reimbursed to DIR within thirty (30) days from receipt of an invoice from DIR reflecting the cost of the compliance check or inspection.

For procuring State Agencies whose payments are processed by the Texas Comptroller of Public Accounts, the volume of payments made to the Reseller through the Texas Comptroller of Public Accounts and the administrative fee based thereon shall be presumed correct unless Reseller can demonstrate to DIR's satisfaction that Reseller's calculation of DIR's administrative fee is correct.

**10. ABILITY TO CONDUCT BUSINESS IN TEXAS.** The Reseller is an entity authorized and validly existing under the laws of its state of organization, and is authorized to do business in the State of Texas. The Reseller is a "Qualified Information Systems Reseller" as defined in §2157.001, Texas Government Code. All products and services offered to Customers under this Contract are listed in Reseller's catalogue on file with the Texas Building and Procurement Commission.

**11. QUOTATIONS, WARRANTY, AND RETURN POLICIES.** Reseller will adhere to the Manufacturer's and/or Reseller's then-currently published policies concerning quotations, warranties, and return policies related to Products available under this Contract. Warranty and return policies for Customers will not be more restrictive or more costly than those warranty and return policies maintained by the Manufacturer and/or Reseller for other similarly situated Customers for like products or services.

**12. INVALID TERM OR CONDITION.** If any term or condition of this Contract shall be held invalid or unenforceable, the remainder of this Contract shall not be affected and shall be valid and enforceable.

**13. ENFORCEMENT OF CONTRACT AND DISPUTE RESOLUTION.** Reseller and DIR agree to the following (i) a party's failure to require strict performance of any provision of this Contract shall not waive or

diminish that party's right thereafter to demand strict compliance with that or any other provision; (ii) applicable to State agency purchases only, for disputes not resolved in the normal course of business, the dispute resolution process provided for in Chapter 2260, Texas Government Code, shall be used; (iii) the laws of the State of Texas shall govern this Contract; (iv) actions or proceedings arising from this Contract shall be heard in a court of competent jurisdiction in Travis County, Texas; and (v) nothing herein shall be construed to waive the State's sovereign immunity.

**14. ENTIRETIES.** The Contract supercedes all prior agreements, representations or promises, whether oral or written, made by the parties regarding the subject matter of this Contract.

**15. MODIFICATION OF CONTRACT TERMS AND/OR AMENDMENTS.** The terms and conditions set forth in the Contract shall govern all transactions by Customers under this Contract. The Contract may only be modified or amended upon mutual agreement of DIR and Reseller. Additional Customer terms and conditions, which do not conflict with the contract, may be added by a Purchase Order and given effect. For individual Purchase Orders, however, the Reseller may offer Customers more advantageous pricing and/or payment options than those set forth in the Contract. In such event, Reseller shall furnish a copy of such better offerings to DIR upon request.

**16. DIR LOGO.** Reseller may use the DIR Go DIRect logo in the promotion of this Contract to Customers with the following stipulations; (i) the logo may not be modified in any way; (ii) when displayed, the size of the DIR logo must be equal to or smaller than the Reseller logo; (iii) the DIR logo is only used to communicate the availability of products and services under this Contract to Customers; and (iv) any other use of the DIR logo requires prior written permission from DIR.

**17. RESELLER LOGO.** DIR may use the Reseller's name and logo in the promotion of this Contract to communicate the availability of Products under this Contract to Customers. Use of the logo may be on the DIR Web Site or on printed materials. Any use of Reseller's Logo by DIR must comply with and be solely related to the purposes of this Contract and any usage guidelines communicated to DIR from time to time. Nothing contained in this Contract will give DIR any right, title, or interest in or to Reseller's trademarks or the goodwill associated therewith, except for the limited usage rights expressly provided by Reseller.

**18. LEASING PROVISION.** The parties to this Contract may agree to provisions that allow leasing of Information Resources Technologies in addition to purchase sales.

**19. SITE PREPARATION.** Customer(s) shall prepare and maintain its site in accordance with written instructions furnished by Reseller prior to the scheduled delivery date of any product or service and shall bear the costs associated with the site preparation.

**20. TRAINING AND TRADE SHOW PARTICIPATION.** Reseller may be required to provide product overview training to DIR at no cost. The training will be held within the Austin, Texas area at times mutually acceptable to DIR and Reseller.

Reseller understands and agrees that it must participate by providing a staffed booth display or similar presence at no less than two (2) trade shows or similar functions sponsored by DIR each calendar year at the Reseller's expense. Reseller must display the DIR logo at all trade shows that potential Customers will attend. DIR reserves the right to approve or disapprove of the location of the use of the DIR logo in or on the Reseller's booth.

**21. ORIENTATION MEETING.** Upon 60 days from execution of the Contract, DIR may require the Reseller to attend an orientation meeting to discuss the Contract content and procedures. The meeting will be held within the Austin, Texas area at a date and time mutually acceptable to DIR and the Reseller. DIR shall bear no cost in the time and travel of the Reseller for attendance at the meeting.

**22. USE OF SUBCONTRACTORS.** Reseller may subcontract installation, training, warranty, or maintenance services. However, Reseller shall remain solely responsible for the performance of its obligations under this Contract. If Reseller uses any subcontractors, Reseller shall satisfy DIR that it has complied and maintains compliance with the DIR HUB Subcontracting Plan.

**23. FORCE MAJEURE.** DIR, Customer, or Reseller may be excused from performance under this contract for any period when performance is prevented as the result of an act of God, strike, war, civil disturbance, epidemic, or court order, provided that the party experiencing the event of Force Majeure has prudently and promptly acted to take any and all steps that are within the party's control to ensure performance and to shorten the duration of the event of Force Majeure. The party suffering an event of Force Majeure shall provide notice of the event to the other parties immediately. Subject to this provision, such non-performance shall not be deemed a default or a ground for termination. However, a Customer may terminate a Purchase Order if it is determined by the Customer that Reseller will not be able to deliver product or services in a timely manner to meet the business needs of the Customer.

**24. TERMINATION FOR NON-APPROPRIATION.** Customer may terminate Purchase Orders and DIR may terminate this Contract if funds sufficient to pay obligations hereunder are not appropriated by the legislative body on behalf of local governments, or by the Texas legislature on behalf of state agencies. In the event of non-appropriation, Reseller will be provided ten (10) days written notice of intent to terminate.

**25. TERMINATION FOR CONVENIENCE.** Either party may terminate this Contract, in whole or in part, by giving the other party thirty (30) days written notice. A Customer may terminate a Purchase Order if it is

determined by the Customer that Reseller will not be able to deliver product or services in a timely manner to meet the business needs of the Customer.

**26. TERMINATION FOR CAUSE.** Either DIR or Reseller may issue a written notice of default to the other upon the occurrence of a material breach of any covenant, warranty or provision of this Contract or a Purchase Order arising hereunder. The non-defaulting party shall give the defaulting party thirty (30) days from receipt of notice to cure said default. If the defaulting party fails to cure said default within the timeframe allowed, the non-defaulting party may, at its option and in addition to any other remedies it may have available, cancel and terminate this Contract. Customers hereunder have no power to terminate this Contract for default. Customer's rights are exclusively based on their Purchase Order.

**27. CUSTOMER RIGHTS UNDER TERMINATION.** In the event this Contract expires or is terminated for any reason, a Customer shall retain its rights under the Purchase Order issued with respect to all products or services ordered and accepted prior to the effective termination date.

**28. RESELLER RIGHTS UNDER TERMINATION.** In the event this Contract expires or is terminated for any reason, a Customer shall pay all amounts due for products or services ordered prior to the effective termination date and ultimately accepted.

**29. SURVIVAL.** All warranty and/or service agreements that were entered into between Reseller and a Customer under the terms and conditions of this Contract shall survive the termination of this Contract.

**30. HANDLING OF WRITTEN COMPLAINTS.** In addition to other remedies contained in this Contract, a person contracting with DIR may direct their written complaints to the following office:

Public Information Office  
Department of Information Resources  
Attn: Matt Kelly  
300 W. 15<sup>th</sup> Street, Suite 1300  
Austin, TX 78701  
(512) 936-6550, voice  
(512) 475-4759, fax  
Email: [matt.kelly@dir.state.tx.us](mailto:matt.kelly@dir.state.tx.us)